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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,013	01/20/2004	William J. Vroon	BRP / 204	1651
26875 7590 07/02/2007 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER GROSSO, HARRY A	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 07/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/761,013	Applicant(s) VROON, WILLIAM J.	
	Examiner Harry A. Grosso	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9, 10, 12, 13, 15-19, 24, 25, 27, 36, 37 and 45-62 is/are pending in the application.
- 4a) Of the above claim(s) 5, 13 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 9, 10, 12, 15-17, 19, 24, 25, 27, 36, 37, and 45-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/4/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 47 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 47 is dependent on claim 45 and recites the same limitations as claim 45.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, 10, 15, 16, 17, 24, 25, 27, 45-49, 51-53, 55-58 and 60-62 rejected under 35 U.S.C. 103(a) as being unpatentable over Slager, of record in view of Francis, Jr., Silberman, both of record and Anderson (4,172,623).

3. Regarding claims 1, 10, 16, 24, 25, 56 and 61, Slager discloses a stackable horizontal dispensing container with a pallet base (12), a pallet cover (16, Figure 3, column 7, line 63 to column 8, line 12) and a three sided sleeve that is removably secured to the base and the cover.

Slager discloses the invention with the sleeve made from plastic but does not teach the sleeve being made of corrugated plastic material with vertically oriented

corrugations. Francis, Jr. discloses a container with a pallet base, a pallet cover and a sleeve and the sleeve is constructed from corrugated plastic with the corrugations extending vertically to resist bowing in a direction along the length or width of the container because the corrugated material provides increased resistance to bending (Figures 1-3, column 3, lines 5-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of corrugated plastic panels as disclosed by Francis, Jr. in the container disclosed by Slager because the use of corrugated material provides increased resistance to bending.

Slager discloses the invention except for fasteners extending through the pallet base, pallet cover and sleeve. Silberman discloses a container with a fastener extending through a pallet base the sleeve (sidewalls) and the cover to secure the parts to form the container (Figures 1-5, page 1, lines 42-71) and make it strong and rigid. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of fasteners extending through the pallet base cover and sleeve as disclosed by Silberman in the container disclosed by Slager to provide a container that is strong and rigid.

Slager discloses the invention but does not teach a rectangular frame with an open interior. Anderson discloses a horizontal dispensing container with a rectangular metal frame secured to the opening to provide rigidity to the container (11, Figure 1, column 1, lines 59-66 and column 2, lines 55-68 and column 3, lines 5-8). It would have been obvious to one of ordinary skill in the art at the time the invention was made to

have incorporated the use of a frame as disclosed by Anderson in the container disclosed by Slager to provide rigidity to the container.

4. Regarding claim 3, Slager discloses the sleeve is made of multiple pieces joined together by the cover.

5. Regarding claims 9, 27 and 46, Slager as modified by Francis Jr., Silberman and Anderson discloses the invention and Anderson further discloses the frame is secured to the sleeve with fasteners (column 3, lines 21-27).

6. Regarding claim 12, Slager discloses the container is stackable; hence a second pallet base would be stacked on the pallet cover (column 7, lines 63-65).

7. Regarding claim 15, Slager as modified by Francis Jr., Silberman and Anderson discloses the claimed invention except for the sleeve being less than twenty millimeters thick. It would have been an obvious matter of design choice to make the sleeve of Slager with a thickness of less than twenty millimeters, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

8. Regarding claims 45, 47, 60 and 62, Slager discloses a horizontal brace, the lip (22) attached to the pallet cover.

9. Regarding claims 51 and 55, Slager as modified by Francis Jr., Silberman and Anderson discloses the invention with Slager disclosing a horizontal brace, the lip (22) attached to the pallet cover and Anderson further disclosing the frame is secured to the sleeve with fasteners (column 3, lines 21-27). The horizontal brace is an integral part of

the cover and, as such, the fastener extending through the cover also is extending through the brace.

10. Regarding claims 4, 17, 48, 49, 52, 53, 57 and 58 Slager discloses dunnage in the container that consists of intersecting partitions.

11. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Francis Jr., Silberman and Anderson in view of Budowski et al, of record. Slager as modified by Francis Jr., Silberman and Anderson discloses the invention except for the sleeve being made of one piece of material. Budowski discloses a horizontal dispensing container with the sleeve made of one piece of material (Figures 1 and 3a-3d, column 6, lines 34-54). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a sleeve made of one piece of material as disclosed by Budowski et al in the container disclosed by Slager as modified by Francis Jr., Silberman and Anderson to provide a tighter, more stable container and simplify assembly.

12. Claims 6, 19, 50, 54 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager as modified by Francis Jr., Silberman and Anderson in view of Bazany, of record. Slager as modified by Francis Jr., Silberman and Anderson discloses the invention except for the use of pouches as dunnage. Bazany disclose a horizontal dispensing container with pouches for dunnage since pouches are commonly use for transporting auto parts (40, Figure 1, column 8, lines 14 to 29) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of pouches for dunnage as disclosed by Bazany in the container

disclosed by Slager as modified by Francis Jr., Silberman and Anderson because it is known in the art to use pouches for transporting items such as auto parts in this type of container.

13. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slager in view Francis, Jr.

Regarding claim 36, Slager discloses a stackable horizontal dispensing container with a pallet base (12), a pallet cover (16, Figure 3, column 7, line 63 to column 8, line 12) and a three sided sleeve that is removably secured to the base and the cover. The segment of sidewalls 14a and 14b indicated at the lead line for 59 that extend into the opening constitute rectangular frame members secured to opposing sides of the sleeve.

Slager does not teach the use of a pallet base and a pallet cover having a lip. Francis, Jr. discloses a container with a pallet base, a pallet cover both having lips (12a and 13a, Figure 1, column 3, lines 36-40) and a sleeve. The lips restrain the sleeve against expansion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of lips on the pallet base and pallet cover as disclosed by Francis, Jr. in the container disclosed by Slager to restrain the sleeve against expansion.

14. Regarding claim 37, Slager discloses dunnage inside the container.

Response to Arguments

Applicant's arguments with respect to the frame structure and the requirement in the amended claims for a frame having an open interior have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant argues that there is no motivation for incorporation of a frame in the container of Slager since it would destroy the purpose of Slager in which the container is retrofittable to provide a shipping container having four solid sidewalls and vertical access through the top. In response, Anderson discloses a similar container with a frame around the open side, which helps to make the container rigid and strong (column 1, lines 64-66 in Anderson). Since Anderson is analogous art, one of ordinary skill in the art would be aware of the concept of using a frame around the open side to provide strength and rigidity. There would be nothing to prevent retrofitting the container to provide a shipping container having four solid sidewalls and vertical access through the

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top. In the retrofit, the frame would be removed and the fourth side would provide the added strength and rigidity.

In response to applicant's argument that Budowski et al is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Budowski et al is horizontal dispensing container just as the container of the instant application.

Applicant argues that the use of a one piece sleeve as taught by Budowski would destroy the purpose of Slager to provide a container retrofittable to provide a shipping container having four solid sidewalls and vertical access through the top. In response, the purpose of Slager et al is to provide a horizontal dispensing container that can also be retrofittable to provide a shipping container accessed through a top opening. The embodiment with the three sidewalls would not be prevented from this function if the three sidewalls were formed as one piece. The sidewall unit would still be capable being attached to the pallet base using the attachment method in Slager et al.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, The Bazany et al reference is a horizontal dispensing container and it would have been obvious to one of ordinary skill in the art that the pouches of Bazany could be used in Slager. Francis, Jr. is a pallet container and would be analogous art. The use of corrugated sidewalls and a lip to help restrain the bottom of the sleeve would have been knowledge generally available to one of ordinary skill in the art. Silberman disclose a container with a base, a sleeve and a cover and a method for securing the cover the sleeve and the base using a fastener that extend through all three. It is not unreasonable to expect one of ordinary skill in the container art to have knowledge of the fastener disclosed by Silberman and it would be obvious to use the concept to provide a more rigid construction.

With respect to claims 36 and 37 which have not been amended, applicant has argued that the segments of side walls 14a and 14b of Slager as indicated at the lead line for 59 in Figure 3 of Slager do not constitute a rectangular frame having an open interior. In response, claim 36 has not been amended to recite a frame having an opening and recites that the rectangular frame defines an opening in the fourth side of the container. The wall segments identified as rectangular frames in the rejection are secured to opposed sides of the sleeve and do define the opening in the fourth side of the container.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

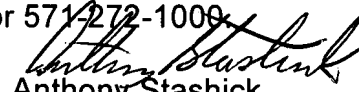
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Anthony Stashick
Supervisory Patent Examiner
Art Unit 3781

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